D.B. CIVIL SPECIAL APPEAL NO.93/2005
(Kanak Singh V/s The State of Rajasthan and ors.)

3.3.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P.VYAS

Mr.Girish Joshi, for the appellant.
Mr.S.Shah, for the respondents

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At the request of learned counsel for the parties, preparation of paper book is dispensed with.

This appeal is filed by the person who was not party to the writ petition before the learned Single Judge. While seeking leave to appeal against the aforesaid judgment, it was stated that his rights are affected by the aforesaid judgment and therefore, he has live interest in challenging the order passed by the learned Single Judge in S.B. Civil Writ Petition No.218/2003.

Considering the petitioner's application, the leave was granted on 21.2.2005. We may also notice here that appeal filed by the present appellant was reported to be barred by 188 days and notices on said application were issued on 23.9.2004. It appears that while considering the application under Section 5 of the Limitation Act and the

application for grant of leave, the orders of condoning the delay in filing the appeal remained to be passed while granting leave to appeal on 21.2.2005. Since thereafter, notices on appeal was issued and was admitted on 17.5.2005, we take it that the application under Section 5 of the Limitation Act was also impliedly allowed.

The interest which the appellant claims in the petition is that respondent – petitioner Suresh Chandra Sharma at whose instance S.B. Civil Writ Petition No.218/2003 was filed was not the person at serial No.3 in the order of merit amongst the candidates selected for being appointed on the post of Para Teacher in the discipline of Physical education under the Gram Panchayat Vedia, Panchayat Samiti, Ahore. According to the appellant, though he stands in the order of merit at No.4 but because of judgment under appeal, he is not likely to be given appointment prior to the petitioner while implementing the order under appeal.

Having considered the material on record, we find that this contention of the learned counsel for the appellant is not tenable.

The respondent – petitioner had filed the writ petition challenging that notwithstanding he was found to be No.3 in the order of merit for the appointment, he has been

excluded from consideration for appointment by relying on a finding on his review application that he is not eligible to hold the post because he does not possess the requisite eligibility criteria of B.P.Ed.,/C.P.Ed./D.P.Ed..

The order dtd. 2.7.2000 passed on his review application filed by said petitioner Suresh Chandra, by the Collector, Jalore goes to show that in the first instance, in the order of merit, Fateh Singh S/O Man Singh was at serial No.1. Laxman Singh and Surendra Singh were respectively at serial No.2 and 3. On considering the review, submitted by Sursh Chandra, respondent – petitioner, the Collector found that Suresh Chandra was at serial No.3 in the order of merit, however, he further held that since he was not eligible to hold the post for the aforesaid reason, therefore, his review application was rejected.

This position was admitted by the respondents No.2 and 3, namely, Dist. Collector, Jalore and the Dist. Education Officer (Elementary Education), Jalore that the respondent – petitioner was in the order of merit at No.3, but was excluded from consideration on account of finding that he is not holding the minimum eligibility qualification.

The learned Single Judge relying on earlier decisions of this Court found that the petitioner – respondent was holding three years' Degree course from University of Nagpur in Physical Education and was thus holding the higher qualification than D.P.Ed. and cannot be held not qualified. About this finding, there is no dispute either by the appellant.

The appellant apparently relies on the order passed on the review application submitted by him in which Surendra Singh has been shown at serial No.3 above the appellant who was shown at serial No.4 and according to him, Suresh Chandra was not standing at No.3. He has placed on record the order passed on review application filed by him which was also decided on 2.7.2002 by the Collector. He has made averment that he has wrongly been shown in the finally published seniority list to be absent and has claimed that his position ought to have been above No.4. However, that was rejected by finding that though he was present, but amongst four candidates, namely, Fateh Singh, Laxman Singh, Surendra Singh and Kanak Singh, he is below Surendra Singh.

Apparently, the order dtd.2.7.2002 passed in the

case of present appellant does not take into account the order passed on the review application submitted by Suresh Chandra, respondent – petitioner whose merit position was clearly stated in the review order to have been improved at No.3, but notwithstanding that he was excluded from consideration on account of alleged ineligibility to hold the post.

In view thereof, it is clear position that the respondent No.4 as a result of reviewing his position was placed at no.3 in the order of merit and he cannot be excluded from consideration for appointment on the ground of alleged ineligibility which was found to be in favour of the respondent – petitioner vide judgment under appeal and that finding has not been challenged. Hence no interference is called for.

Accordingly, the appeal is dismissed. No order as to costs.

(R.P.VYAS)J (RAJESH BALIA)J.

SS/-